

# **BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA**

<b>IN THE MATTER OF THE APPLICATION OF )</b>	<b>ORDER FOR AND NOTICE</b>
<b>QWEST CORPORATION TO RECLASSIFY )</b>	<b>OF PROCEDURAL</b>
<b>LOCAL EXCHANGE SERVICES AS FULLY )</b>	<b>SCHEDULE AND HEARING</b>
<b>COMPETITIVE )</b>	<b>TC03-057</b>

On March 14, 2003, the South Dakota Public Utilities Commission (Commission) received the complaint of Qwest Corporation (Qwest) to reclassify local exchange and other related services as fully competitive in all Qwest exchanges in South Dakota (Complaint).

On March 20, 2003, the Commission electronically transmitted notice of the filing and the intervention deadline of April 4, 2003, to interested individuals and entities. Black Hills FiberCom, L.L.C. (Black Hills) filed a Petition for Leave to Intervene on March 26, 2003, Northern Valley Communications, L.L.C. (NVC) filed a Petition to Intervene on March 28, 2003, Midcontinent Communications, Inc. (Midcontinent) filed a Petition to Intervene on April 2, 2003, PrairieWave Telecommunications, Inc. and PrairieWave Community Telephone, Inc. (PrairieWave) filed a Petition to Intervene on April 3, 2003, and Midstate Telecom, Inc. (Midstate), South Dakota Telecommunications Association (SDTA) and WorldCom (WorldCom) filed Petitions to Intervene on April 4, 2003.

The Commission has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-31, specifically SDCL 49-31-3, 49-31-3.2 and 49-31-44 and ARSD 20:10:24:11 through 20:10:24:19.

At a regularly scheduled meeting of April 15, 2003, the Commission granted intervention to Black Hills, NVC, Midcontinent, PrairieWave, Midstate, SDTA and WorldCom.

At a regularly scheduled meeting of May 6, 2003, the Commission found that the proceeding cannot be completed within 90 days and that an additional 90 day period is necessary for the Commission to adequately and completely fulfill its duty under Chapter 49-31. The Commission deferred its decision on the assessment of a deposit pursuant to SDCL 49-31-44.

Finally, the Commission approved the procedural schedule as set forth below.

The procedural schedule for testimony shall be as follows:

## **DATE**

May 27, 2003

## **PROCEDURAL SCHEDULE**

Staff and Intervenors Testimony Due

July 28, 2003

Qwest Rebuttal Testimony Due

August 12-15, 2003

Hearing

A hearing shall be held beginning at 9:00 A.M. on August 12, 2003 and continuing through August 15, 2003, in Room 412 of the State Capitol Building, 500 E. Capitol, Pierre, South Dakota. All persons testifying will be subject to cross-examination by the parties.

The issue at the hearing is whether the local exchange services and other related services provided by Qwest in South Dakota, listed on Attachment 1 to the testimony of David L. Tietzel filed with the Complaint and attached hereto as Attachment 1, shall be classified as fully competitive services based upon their meeting the definition of "fully competitive service" set forth in SDCL 49-31-1.3 and satisfying the criteria for classification as fully competitive services set forth in 49-31-3.2. The Commission shall determine in accordance with SDCL 49-31-1.3 whether the identified services are services (i) which have alternative services available to over fifty percent of the company's customers for that service or (ii) which are of limited scope or so discretionary in nature that regulation is not warranted. In determining how the services are to be classified, the Commission shall also consider in accordance with SDCL 49-31-3.2:

- (1) The number and size of alternative providers of the service and the affiliation to other providers;
- (2) The extent to which services are available from alternative providers in the relevant market;
- (3) The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms, and conditions of service;
- (4) The market share, the ability of the market to hold prices close to cost, and other economic measures of market power; and
- (5) The impact on universal service.

The hearing shall be an adversary proceeding conducted pursuant to SDCL Chapter 1-26. All parties have the right to be present and to be represented by an attorney. These rights and other due process rights shall be forfeited if not exercised at the hearing. If you or your representative fail to appear at the time and place set for the hearing, the Final Decision will be based solely on the testimony and evidence provided, if any, during the hearing or a Final Decision may be issued by default pursuant to SDCL 1-26-20. After the hearing, the Commission will consider all evidence and testimony that was presented at the hearing. The Commission will then enter Findings of Fact, Conclusions of Law, and a Final Decision regarding this matter. As a result of the hearing, the Commission shall determine whether the local exchange and other related services specified in the Complaint shall be reclassified as fully competitive services. The Commission's Final Decision may be appealed by the parties to the state Circuit Court and the state Supreme Court as provided by law. It is therefore

ORDERED, that an additional 90 days shall be allowed for the proceeding. it is further

ORDERED, that the procedural schedule set forth above shall be followed by all parties to this proceeding. It is further

ORDERED, that a hearing shall be held at the time and place specified above on the issue of whether the local exchange and other related services specified in the Complaint shall be reclassified as fully competitive services.

Pursuant to the Americans with Disabilities Act, this hearing is being held in a physically accessible location. Please contact the Public Utilities Commission at 1-800-332-1782 at least 48 hours prior to the hearing if you have special needs so arrangements can be made to accommodate you.

Dated at Pierre, South Dakota, this 16th day of May, 2003.

<p align="center"><b>CERTIFICATE OF SERVICE</b></p> <p>The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.</p> <p>By: _____</p> <p>Date: _____</p> <p align="center">(OFFICIAL SEAL)</p>
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BY ORDER OF THE COMMISSION:

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ROBERT K. SAHR, Chairman

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GARY HANSON, Commissioner

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JAMES A. BURG, Commissioner